

Case No.: 14998-230

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Aikawa, et. al.
Serial No. : 09/635,109
Filed : August 9, 2000
Title : "OPTICAL FIBER AND OPTICAL TRANSMISSION SYSTEM"
Group : 2874
Examiner : Mike Stahl

DECLARATION OF DANIEL BASOV, ESQ.
IN SUPPORT OF PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVIDABLY UNDER 37 C.F.R. 1.137(a)

Mail Stop Petition
Commissioner for Patents
P.O. Box. 1450
Alexandria, VA 22313-1450

To whom it may concern:

The undersigned attorney, Daniel Basov, Esq., an associate with the law firm of Chadbourne and Parke LLP, and an attorney of record for above patent application, hereby declares and attests as follows:

1. On December 4, 2001, pursuant to client's instructions, I submitted to the U.S. Patent Office an Amendment & Response to the Office Action dated September 5, 2001. This Amendment & Response were received and processed by the PTO, as acknowledged by the return post card dated January 9, 2002, which I received back from the PTO. A copy of this returned post card is enclosed in Appendix 1.

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OFFICE OF PETITIONS

2. On November 19, 2002, pursuant to client's instructions, I submitted an Information Disclosure Statement (IDS) under 37 CFR 1.97(c) with 3 references. This IDS was also received and processed by the PTO, as acknowledged by the return post card dated November 25, 2002, which I received back from the PTO. A copy of this returned post card is enclosed in Appendix 2.

3. On October 29, 2003, pursuant to client's instructions, I submitted copies of other IDS submissions, together with translated Japanese references, and requested that they be properly entered. The confirmatory post card dated October 31, 2003 was returned back to me by the PTO. A copy of this returned post card is enclosed in Appendix 3.

4. On August 16, 2004, in accordance with client's instructions, I submitted a status letter to the Patent Office, requesting to find out the status of this application. A copy of this status letter is enclosed in Appendix 4. A stamp on this letter indicates that it was received by the PTO on August 24, 2004.

5. Subsequently, in September of 2004, at my request, the patent docket clerk at Chadbourne & Parke LLP, Ms. Tammy Parubchenko called the Patent Office and inquired about the status of the above patent application.

6. On September 10, 2004, I received a copy of the Notice of Abandonment and cover sheet for the above application by facsimile. The cover sheet for the Notice Abandonment states that it was mailed on June 31, 2002. There is no date of mailing on the actual copy of the Notice of Abandonment. A copy of the cover sheet and the Notice of Abandonment is enclosed in Appendix 5.

7. Upon further inquiry, I was informed that the reason for the Abandonment was due to the failure to pay issue fee pursuant to the Notice of Allowability, which was presumably mailed

by the PTO on January 29, 2002. A copy of this Notice of Allowability was faxed to Ms. Tammy Parubchenko on October 4, 2004, and is enclosed in Appendix 6.

8. I hereby attest that it is standard practice at the law firm of Chadbourne and Parke LLP to have all correspondence received from the Patent Office to be (a) reviewed by the prosecuting attorney; (b) immediately forwarded by the attorney to the patent docketing clerk, for docketing into the electronic docketing system maintained by the firm; (c) stored as paper copies in the file jacket of the patent application at issue; and (d) transmitted back to the prosecuting attorney for further processing and preparation of a response.

9. I attest that prior to September 10, 2004, I have neither received nor was aware of issuance of either the Notice of Allowability (*see* Appendix 6) or Notice of Abandonment (*see* Appendix 5) from the Patent Office for the above patent application.

10. I also attest that no information regarding either the Notice of Allowability or Notice of Abandonment was entered into the electronic docketing system at Chadbourne & Parke LLP or placed into the file jacket for the above case. A print out from the electronic docketing system for the above case is enclosed in Appendix 7 (showing all recorded communications with the PTO and client in the remarks section.) A copy of the front of the file folder maintained by the patent docketing clerk and prosecuting attorneys at Chadbourne & Parke LLP for the above case is enclosed in Appendix 8.

11. I attest that other communications from the U.S. Patent Office were properly received and recorded in the electronic docketing system at Chadbourne & Parke LLP around June 31, 2002 and January 29, 2002. Appendix 9 includes a print out from the electronic docketing system maintained at Chadbourne & Parke LLP, showing (*see* highlighted text in the remarks section) that other communications, for unrelated patent applications, were properly

received and recorded in the same time frame when the Notice of Allowability and Notice of Abandonment were presumably mailed by the Patent Office.

12. I further attest that at no time prior to September 10, 2004 was the abandonment of this application brought to my attention by the U.S. Patent Office. This includes submissions and acknowledgement of the receipt by the PTO of the following: (a) the IDS submitted on November 19, 2002; (b) the IDS submitted on October 29, 2003; and (c) the status letter of August 16, 2004.

13. Since there is no record of receiving the Notice of Allowability or Notice of Abandonment in the electronic docketing system or the file folder maintained for the above application at Chadbourne & Parke LLP, neither review of the internal docketing system nor review of the file folder could have prevented the abandonment of this application, which is presumed to have been unavoidable, and caused by a sequence of events beyond my control.

14. I further declare that all of the statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.



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Title : "OPTICAL FIBER AND OPTICAL TRANSMISSION SYSTEM"
Group : 2874
Examiner : Mike Stahl

DECLARATION OF TAMMY PARUBCHENKO
IN SUPPORT OF PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 C.F.R. 1.137(a)

Mail Stop Petition
Commissioner for Patents
P.O. Box. 1450
Alexandria, VA 22313-1450

To whom it may concern:

1. My name is Tammy Parubchenko, and I am a paralegal and patent docketing clerk with Chadbourne & Parke LLP (the "firm"), attorneys of record for the above-referenced application. I submit this declaration in support of the firm's petition for revival of an application for patent abandoned unavoidably under 37 C.F.R. 1.137(a).

2. Prior to my employment at the law firm of Chadbourne and Parke LLP in June of 2002, I was a patent paralegal and docket clerk for the U.S. and foreign patents and trademarks at the law firms of Dechert, Price and Rhoads, LLP (for 4.5 years), and Bryan Cave, LLP (for about 4 years).

3. I hereby attest that it is standard practice at the law firm of Chadbourne and Parke LLP to have all correspondence received from the U.S. Patent Office to be (a) reviewed by the prosecuting attorney; (b) immediately forwarded by the attorney to me, for docketing into the electronic docketing system that I maintain for the firm; (c) stored as paper copies in the file jacket corresponding to the patent application at issue; and (d) transmitted back to the prosecuting attorney for further processing and preparation of a response.

4. I also receive and docket all correspondence from the U.S. Patent Office that is mailed to the firm, *i.e.*, addressed to the general mail room of Chadbourne and Parke, LLP, 30 Rockefeller Plaza, New York, New York 10112.

5. As part of the docketing procedure followed at Chadbourne and Parke LLP, I set up respective due dates with multiple and interim reminders for each due date, or for any response to be filed with the Patent Office. In the "remarks" section of the docketing system, it is standard practice to record historical data concerning communications with PTO and the client for the application at issue. This includes the following:

- a) kind of correspondence received;
- b) date of the correspondence;
- c) date of the receipt of correspondence;
- d) date of notice to the client;
- e) instructions and correspondence sent to or received from the client; and
- f) list of itemized documents sent to the PTO.

6. As part of the docketing procedure followed at Chadbourne and Parke LLP, all correspondence with PTO is placed and attached to the file folder corresponding to the patent application at issue.

7. I hereby attest that prior to September 10, 2004, I have not received or was aware of the issuance of either the Notice of Allowability (*see* Appendix 6) or Notice of Abandonment (*see* Appendix 5) from the Patent Office for the above patent application.

8. I also attest that no information or documents regarding either the Notice of Allowability or Notice of Abandonment were entered into the electronic docketing system at Chadbourne & Parke LLP or placed into the file jacket for the above case prior to September 10, 2004 (following my telephone inquiry regarding the status of the above application).

9. As indicated in the print out from the electronic docketing system for the above case, which is enclosed in Appendix 7, there was no electronic entry recorded that would indicate that either a Notice of Abandonment or Notice of Allowability were received for the above patent application in January or July of 2002.

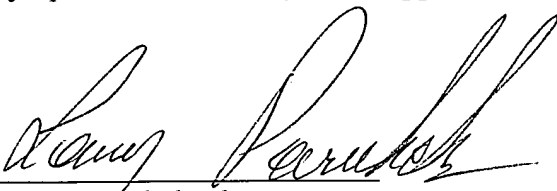
10. I attest that other communications from the U.S. Patent Office were properly received and recorded in the electronic docketing system at Chadbourne & Parke LLP around June 31, 2002 and January 29, 2002. Appendix 9 includes a print out from the electronic docketing system maintained at Chadbourne & Parke LLP, showing (*see* highlighted text in the remarks section) that other communications, for unrelated patent applications, were properly received and recorded in the same time frame when the Notice of Allowability and Notice of Abandonment were presumably mailed by the Patent Office for the above patent application.

11. I further attest that at no time prior to September 10, 2004 was the abandonment of this application brought to my attention by the U.S. Patent Office.

12. I further declare that all of the statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made

are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

November 22, 2004



Tammy Parubchenko,
Paralegal and Patent Docketing Clerk,

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, New York 10112

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail under 37 C.F.R. 1.8 in an envelope addressed to:

Commissioner for Patents,
P.O. Box 1450,
Alexandria, VA 22313-1450.

DATE: November 22, 2004

NAME: Tammy Parubchenko

SIGNATURE: 

Respectfully submitted,

By D. Basov

Daniel Basov, Esq.
Reg. # 42,303

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Attorneys for Applicant

November 19, 2004